

2008-033504
SF

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MICHAEL WARREN and EVELYN WARREN,

Plaintiffs,

-against-

THE CITY OF NEW YORK, et al.,

Defendants.

**STIPULATION OF
SETTLEMENT AND ORDER OF
DISMISSAL**

08-CV-3815 (ARR)

FILED
IN CLERK'S OFFICE
US DISTRICT COURT E.D.N.Y.

★ MAY 22 2012 ★

BROOKLYN OFFICE

WHEREAS, plaintiffs commenced this action by filing a complaint on or about September 18, 2008, alleging that the defendants violated plaintiffs' federal civil and state common law rights; and

WHEREAS, defendants have denied any and all liability arising out of plaintiffs' allegations; and

WHEREAS, the parties now desire to resolve the issues raised in this litigation, without further proceedings and without admitting any fault or liability; and

WHEREAS, plaintiffs have authorized their counsel to settle this matter on the terms set forth below;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, as follows:

1. The above-referenced action is hereby dismissed against defendants, with prejudice, and without costs, expenses, or attorneys' fees in excess of the amount specified in paragraph "2" below.

2. Defendant City of New York hereby agrees to pay plaintiffs Michael Warren and Evelyn Warren, jointly, the total sum of Three Hundred Sixty Thousand and No/00 (\$360,000.00) Dollars in full satisfaction of all claims, including claims for costs, expenses and attorneys' fees. In consideration for the payment of this sum, plaintiffs agree to dismissal of all the claims against the defendants and to release the defendants and any present or former employees and agents of the City of New York or any entity represented by the Office of the Corporation Counsel, from any and all liability, claims, or rights of action alleging a violation of plaintiff's civil rights, from the beginning of the world to the date of the General Release, including claims for costs, expenses, and attorneys' fees.

3. Plaintiffs shall execute and deliver to defendant City of New York's attorney all documents necessary to effect this settlement, including, without limitation, General Releases signed by each plaintiff based on the terms of paragraph 2 above and an Affidavit of Status of Liens. If Medicare has provided payment and/or benefits for any injury or condition that is the subject of this lawsuit, prior to tendering the requisite documents to effect this settlement, plaintiff shall have notified Medicare and shall submit with the settlement documents a Medicare final demand letter for conditional payments. A Medicare Set-Aside Trust may also be required if future anticipated medical costs are found to be necessary pursuant to 42 U.S.C. § 1395y(b) and 42 C.F.R. §§ 411.22 through 411.26.

4. Nothing contained herein shall be deemed to be an admission by the defendants that they have in any manner or way violated plaintiff's rights, or the rights of any other person or entity, as defined in the constitutions, statutes, ordinances, rules or regulations of the United States, the State of New York, or the City of New York or any other rules or

regulations of any department or subdivision of the City of New York. This stipulation shall not be admissible in, nor is it related to, any other litigation or settlement negotiations.

5. Nothing contained herein shall be deemed to constitute a policy or practice of the City of New York or any agency thereof.


6. Plaintiffs agree to hold harmless defendants regarding any liens or past and/or future Medicare payments, presently known or unknown, in connection with this matter. If conditional and/or future anticipated Medicare payments have not been satisfied, defendants reserve the right to issue a multiparty settlement check naming Medicare as a payee or to issue a check to Medicare directly based upon Medicare's final demand letter.

7. This Stipulation and Order contains all the terms and conditions agreed upon by the parties hereto, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Stipulation and Order regarding the subject matter of the instant proceeding shall be deemed to exist, or to bind the parties hereto, or to vary the terms and conditions contained herein.

Dated: New York, New York
May 15, 2012

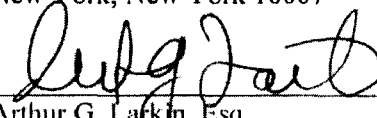
JONATHAN C. MOORE, ESQ.
Attorney for Plaintiff
Beldock Levine & Hoffman LLP
99 Park Avenue, Suite 1600
New York, New York 10016

By:


Jonathan C. Moore, Esq.
Attorney for Plaintiffs

MICHAEL A. CARDOZO
Corporation Counsel of the
City of New York
Attorney for Defendants
100 Church Street, Rm. 3-177
New York, New York 10007

By:


Arthur G. Larkin, Esq.
Assistant Corporation Counsel

SO ORDERED:

s/Allyne R. Ross

HON. ALLYNE R. ROSS
UNITED STATES DISTRICT JUDGE

Dated: New York, New York
5/18, 2012

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- x
MICHAEL WARREN and EVELYN WARREN,

Plaintiffs,

**PLAINTIFF'S AFFIDAVIT OF
STATUS OF LIENS**

-against-

08-CV-3815 (ARR)

THE CITY OF NEW YORK, et al.,

Defendants.
----- x

STATE OF NEW YORK)
 : SS.:
COUNTY OF KINGS)

MICHAEL WARREN, being duly sworn, says:

SECTION I - Background Information (complete all items)

I am one of the plaintiffs in the above-entitled action and reside at [REDACTED]
[REDACTED]

My date of birth is [REDACTED] and my social security number is [REDACTED].

My Medicare number is [REDACTED]

☒ By checking this box I affirm that I am making this affidavit with full knowledge that the same will be relied upon by The City of New York, its agents, employees, and representatives in connection with settlement of this claim/action against them.

SECTION II – The City of New York Agencies or Departments (check one)

☒ I am not indebted to any department or agency of The City of New York and there are no liens outstanding.

☐ I have unpaid liens, violations or other debts owed to a department and/or agency of The City of New York. I expressly consent to the payment of those sums, or to the sums agreed upon by counsel, directly from the settlement proceeds.

List all liens, violations and/or other debts by providing the name of each City agency (e.g. Department of Finance; Department of Sanitation; Environmental Control Board) and the outstanding sums due below:

SECTION III - Medicaid or Public Assistance (check one)

☒ I have not received Medicaid or Public Assistance benefits.

☐ I have received Medicaid and/or Public Assistance benefits. The Human Resources Administration, Department of Social Services of The City of New York ("HRA") has issued a Final Notice of Lien which provides a total amount due of \$_____ (*attach copy*). I understand that HRA will be paid that amount, or the amount agreed upon by counsel, directly from the settlement proceeds, and that the payment of an amount lesser than the final notice amount is a non-assertion of HRA's lien against the proceeds of this settlement and shall not be deemed a waiver of the full amount owed.

SECTION IV - Medicare (check one)

☐ As of the date of this affidavit, I have not received Medicare coverage/ benefits.
[Note: This query is made pursuant to Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007, 42 U.S.C. 1395(B)(8)].

☒ I am a Medicare beneficiary. My Medicare # [HIC #] is [REDACTED].
[Note: This query is made pursuant to Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007, 42 U.S.C. 1395 (B)(8).] I am aware of my obligation to reimburse Medicare, out of the proceeds of a settlement or judgment in this lawsuit, for payments and/or benefits Medicare has provided to me, or provides to me in the future, that relate to the injury or condition that is the subject of the lawsuit. I understand that reimbursement directly to Medicare may be made from proceeds I receive from any judgment or settlement of this action.

SECTION V - Child Support

☒ I am not in arrears in child support payments.

☐ I am in arrears in child support payments and expressly agree to the collection by the NYC Office of Child Support of all unpaid sums directly from the settlement proceeds.

SECTION VI - New York City Public Hospitals (check one)

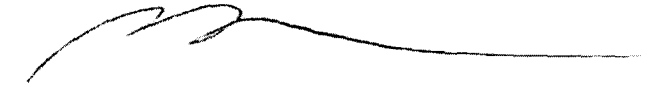
☒ I am not indebted nor am I subject to liens by any City public hospital.

☐ I am indebted to _____ [City hospital] in the total lien amount of \$ _____. I expressly consent to the payment of that sum directly from the settlement proceeds.

SECTION VII - Workers' Compensation/Disability Benefits (check one)

☒ I have not received Workers' Compensation or Disability Benefits and there are no liens for the same in this matter.

☐ I am indebted to _____ [for Workers' Compensation or Disability Benefits] in the total lien amount of \$ _____. I expressly consent to the payment of that sum directly from the settlement proceeds.



MICHAEL WARREN

Sworn to before me this
17th day of May, 2012



NOTARY PUBLIC

BESS D. PETERKIN
Notary Public, State of New York
No. 01PE6071530
Qualified in Kings County
Commission Expires 3/18/2014

GENERAL RELEASE

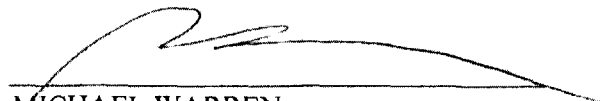
KNOW THAT I, MICHAEL WARREN, date of birth [REDACTED], Social Security No. [REDACTED] a plaintiff in the action entitled Warren v. City Of New York, et al., 08-CV-3815 (ARR), in consideration of the total payment of Three Hundred Sixty Thousand and No/00 (\$360,000.00) Dollars to my wife and co-plaintiff EVELYN WARREN, and me, jointly, by the City of New York, do hereby release and discharge the defendants; the defendants' successors or assigns; and all past and present officials, employees, representatives and agents of the City of New York or any entity represented by the Office of the Corporation Counsel, from any and all liability, claims, or rights of action alleging a violation of my civil rights, from the beginning of the world to the date of this General Release, including claims for costs, expenses, and attorneys' fees.

This Release may not be changed orally.

THE UNDERSIGNED HAS READ THE FOREGOING RELEASE


AND FULLY UNDERSTANDS IT.

IN WITNESS WHEREOF, I have executed this Release this 17th day of May, 2012.


MICHAEL WARREN

STATE OF New York, COUNTY OF Kings SS.:

On May 17, 2012 before me personally came MICHAEL WARREN, to me known, and known to me to be the individual described in, and who executed the foregoing RELEASE, and duly acknowledged to me that he executed the same.


NOTARY PUBLIC

BESS D. PETERKIN
Notary Public, State of New York
No. 01PE6071530
Qualified in Kings County
Commission Expires 3/18/20 14

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MICHAEL WARREN and EVELYN WARREN,

Plaintiffs,

**PLAINTIFF'S AFFIDAVIT OF
STATUS OF LIENS**

-against-

08-CV-3815 (ARR)

THE CITY OF NEW YORK, et al.,

Defendants.
----- x

STATE OF NEW YORK)

: SS.:

COUNTY OF KINGS)

EVELYN WARREN, being duly sworn, says:

SECTION I - Background Information (complete all items)

I am one of the plaintiffs in the above-entitled action, and reside at [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED] my social security number is [REDACTED] 5 [REDACTED]

My Medicare number is None.

☐ By checking this box I affirm that I am making this affidavit with full knowledge that the same will be relied upon by The City of New York, its agents, employees, and representatives in connection with settlement of this claim/action against them.

SECTION II – The City of New York Agencies or Departments (check one)

☒ I am not indebted to any department or agency of The City of New York and there are no liens outstanding.

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☐ I have received Medicaid and/or Public Assistance benefits. The Human Resources Administration, Department of Social Services of The City of New York ("HRA") has issued a Final Notice of Lien which provides a total amount due of \$_____ (*attach copy*). I understand that HRA will be paid that amount, or the amount agreed upon by counsel, directly from the settlement proceeds, and that the payment of an amount lesser than the final notice amount is a non-assertion of HRA's lien against the proceeds of this settlement and shall not be deemed a waiver of the full amount owed.

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[Note: This query is made pursuant to Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007, 42 U.S.C. 1395(B)(8)].

☐ I am a Medicare beneficiary. My Medicare # [HIC #] is _____.
[Note: This query is made pursuant to Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007, 42 U.S.C. 1395 (B)(8).] I am aware of my obligation to reimburse Medicare, out of the proceeds of a settlement or judgment in this lawsuit, for payments and/or benefits Medicare has provided to me, or provides to me in the future, that relate to the injury or condition that is the subject of the lawsuit. I understand that reimbursement directly to Medicare may be made from proceeds I receive from any judgment or settlement of this action.

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☐ I am indebted to _____ [City hospital] in the total lien amount of \$ _____. I expressly consent to the payment of that sum directly from the settlement proceeds.

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☒ I have not received Workers' Compensation or Disability Benefits and there are no liens for the same in this matter.

☐ I am indebted to _____ [for Workers' Compensation or Disability Benefits] in the total lien amount of \$ _____. I expressly consent to the payment of that sum directly from the settlement proceeds.


EVELYN WARREN

Sworn to before me this
17th day of May, 2012


NOTARY PUBLIC

BESS D. PETERKIN
Notary Public, State of New York
No. 01PE6071530
Qualified in Kings County
Commission Expires 3/18/2014

GENERAL RELEASE

KNOW THAT I, EVELYN WARREN, date of birth [REDACTED], Social Security No. [REDACTED] a plaintiff in the action entitled Warren v. City Of New York, et al., 08-CV-3815 (ARR), in consideration of the total payment of Three Hundred Sixty Thousand and No/00 (\$360,000.00) Dollars to my husband and co-plaintiff MICHAEL WARREN, and me, jointly, by the City of New York, do hereby release and discharge the defendants; the defendants' successors or assigns; and all past and present officials, employees, representatives and agents of the City of New York or any entity represented by the Office of the Corporation Counsel, from any and all liability, claims, or rights of action alleging a violation of my civil rights, from the beginning of the world to the date of this General Release, including claims for costs, expenses, and attorneys' fees.

This Release may not be changed orally.

**THE UNDERSIGNED HAS READ THE FOREGOING RELEASE
AND FULLY UNDERSTANDS IT.**

IN WITNESS WHEREOF, I have executed this Release this 17th day of May, 2012.


EVELYN WARREN

STATE OF New York, COUNTY OF Kings SS.:

On MAY 17, 2012 before me personally came EVELYN WARREN, to me known, and known to me to be the individual described in, and who executed the foregoing RELEASE, and duly acknowledged to me that she executed the same.


NOTARY PUBLIC

BESS D. PETERKIN
Notary Public, State of New York
No. 01PE6071530
Qualified in Kings County
Commission Expires 3/18/20 11